

**Rule 34. Oral Argument****(a) In General.**

- (1) **Party's Statement.** Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.
- (2) **Standards.** Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:
  - (A) the appeal is frivolous;
  - (B) the dispositive issue or issues have been authoritatively decided; or
  - (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.
- (b) **Notice of Argument; Postponement.** The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.
- (c) **Order and Contents of Argument.** The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.
- (d) **Cross-Appeals and Separate Appeals.** If there is a cross-appeal, Rule 28(h) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(A) a joint statement of compliance with this rule indicating that settlement discussions have been conducted; or

(B) an agreement that the proceeding be dismissed under Federal Rule of Appellate Procedure 42(b).

**(b) Other Settlement Discussions.** This rule does not preclude the parties from discussing settlement or agreeing to dismiss the proceedings at other times, including after oral argument but before decision.

**Rule 34. Oral Argument.**

**(a) Reply Brief Instead of Oral Argument.** If an appeal is not called for oral argument and the appellant declined to file a reply brief in anticipation of replying during oral argument, the appellant may file a reply brief within 14 days after the notice that the appeal will be submitted on the briefs.

**(b) Time Allowed.** The time allowed each side for oral argument will be determined by the court. The clerk will advise counsel of the time allotted. A party is not obliged to use all the time allowed. The court may terminate the argument if it deems further argument unnecessary.

**(c) Visual Aids.**

(1) **Visual Aids Used at the Trial or Administrative Hearing; Notice.** If counsel intends to use at oral argument a visual aid used at a trial or administrative hearing, counsel must advise the clerk by letter in an original and 3 copies and served no later than 7 days before argument of the proposed visual aid.

(2) **Visual Aids Not Used at the Trial or Administrative Hearing; Notice.** If counsel intends to use at oral argument a visual aid that was not used at a trial or administrative hearing, counsel must give written notice to opposing counsel no later than 15 days before the oral argument.

(3) **Objection to the Use of Visual Aids.** An objection to the proposed use of a visual aid at oral argument must be in writing, served on all parties, and filed no later than 5 days before the oral argument. If a party objects, the parties' written submissions will be treated as a motion and response and will be referred to the panel.

(4) **Scope.** This rule does not preclude use of a chalkboard or equivalent during oral argument.

(5) **Disposition.** The clerk may dispose of visual aids not removed by the parties.

## FEDERAL RULES OF APPELLATE PROCEDURE

## FEDERAL CIRCUIT RULE

- (e) **Nonappearance of a Party.** If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.
- (f) **Submission on Briefs.** The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.
- (g) **Use of Physical Exhibits at Argument; Removal.** Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them .

### ***Practice Notes***

**Court sessions; Hearing Date.** Sessions of the court will be held as announced by the court. Sessions are held regularly in Washington, D.C., but the court may sit elsewhere. Appeals are usually calendared for oral argument or submission without argument within 2 months after the briefs and joint appendix are filed. Counsel are advised of the firm date of hearing - which may be earlier or later than the tentative date of hearing - approximately 30 days before the session. Once scheduled, a case will not be postponed except on motion showing compelling reasons. Counsel should advise the clerk in writing of potential scheduling conflicts as soon as these become known, and should not wait until an actual conflict to arise. Counsel requiring a courtroom accessible to the disabled if oral argument is scheduled should notify the clerk of this requirement when counsel files the entry of appearance. Counsel may elect to submit on the briefs to avoid delay in disposition or for any other reason.

**Oral Argument.** Counsel must report to the clerk's office at least 30 minutes before the scheduled session and before proceeding to the courtroom. The members of the panel will have read the briefs before oral argument. Counsel should, therefore, emphasize the dispositive issue or issues. Time allotted for oral argument is ordinarily 15 minutes, although the court may vary this depending on the nature of the case. The court may extend the allotted time during the argument, or it may terminate the argument, if it deems it appropriate.

**Pamphlet.** When counsel are advised of the firm date of oral argument, they will be sent a pamphlet, Notice to Counsel on Oral Argument, which contains detailed instructions about the conduct of oral argument.

**Copies of Recordings Available.** Oral arguments are recorded for the convenience of the court. Copies of a recording may be purchased from the administrative services officer of the court.

**Open to Public.** Unless held in camera, oral arguments are open to the public. Those in attendance whose attire or behavior reflects adversely on the dignity of the proceedings will be asked to leave.

**Oral Argument.** Oral argument is ordinarily not granted on motions. See Federal Rule of Appellate Procedure 27(e).